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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206921
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Rich Products Corporation,

Opposer,

v.

VegiPro Brands, LLC,

Applicant.

Opposition No. 91206921
Application Serial No. 85/577,551
Mark: BETTER ON TOP!

**APPLICANT VEGIPRO BRANDS, LLC'S OPPOSITION TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Opposer Rich Products Corporation ("Opposer") adopted the descriptive marks RICH'S ON TOP and ON TOP marks, knowing that the phrase ON TOP was merely descriptive of its non-dairy whipped topping, which is placed "on top" of the food item. This descriptiveness is even implied by the word "topping" in the good description itself. Moreover, Opposer's whipped topping is not truly a dairy free/vegan whipped topping and it contains genetically modified ingredients (GMOs). Furthermore, Opposer markets, distributes, and sells its ON TOP topping directly to the food service industry, such as restaurants, hotels, and catering companies. Opposer does not sell to the end consumer. And importantly, Opposer currently co-exists with many other existing trademark registrations that consist of or include the word TOP for whipped topping goods.

Despite all of this and the lack of any likelihood of confusion among consumers in the marketplace, Opposer is overreaching and attempting to prevent Applicant VegiPro Brands, LLC ("Applicant") from registering the substantially different BETTER ON TOP! mark for a truly dairy-free, vegan whipped topping that will not be directly sold to the food service industry.

Opposer is doing this despite the fact that it already co-exists with much more similar marks, including TOPS for whipped topping. Given the descriptive nature of Opposer's marks, Applicant respectfully submits that Opposer's marks need to be very narrowly construed such that they cannot constitute sufficient grounds to prevent Applicant from registering its BETTER ON TOP! mark. At a minimum, due to the differences in the marks, goods, trade channels, and consumers, as well as the crowded field of TOP marks, Applicant believes that there are genuine issues of material fact precluding summary judgment.

II. RELEVANT BACKGROUND

A. Applicant Files its Application for BETTER ON TOP!

On March 22, 2012, Applicant filed U.S. Application Serial No. 85/577,551 for the BETTER ON TOP! trademark in connection with "whipped topping" in International Class 29. Tarabichi Decl., ¶ 2, Ex. A. On June 27, 2012, the Examining Attorney assigned to the application performed a search of the USPTO's trademark records. *Id.*, ¶ 3, Ex. B. Finding no conflicting marks, the Examining Attorney approved Applicant's BETTER ON TOP! trademark application for publication the next day on June 28, 2012. *Id.*, ¶ 4, Ex. C. On August 14, 2012, the USPTO published Applicant's BETTER ON TOP! trademark application for opposition. *Id.*, ¶ 5, Ex. D.

B. Opposer Files its Notice of Opposition

On September 11, 2012, Opposer filed a notice of opposition against Applicant's BETTER ON TOP! trademark application on the grounds of deceptiveness under § 2(a), false suggestion of a connection under § 2(a), and priority and likelihood of confusion under § 2(d). *See* ESTTA No. 1. After various pleadings-related filings, Opposer eventually amended its notice of opposition to withdraw its claims of deceptiveness under § 2(a) and false suggestion of a connection under § 2(a), choosing to proceed solely with its claim under § 2(d) for priority and likelihood of confusion. *See* ESTTA No. 10.

C. Opposer Took No Discovery in the Opposition

Despite initiating an opposition proceeding against Applicant's BETTER ON TOP! trademark application, Opposer propounded no discovery whatsoever. Discovery closed in this opposition on September 27, 2014. *See* ESTTA No. 13. However, Opposer did not serve any written discovery requests (document requests, interrogatories, or requests for admission). Tarabichi Decl., ¶ 6. Likewise, Opposer did not notice any depositions. *Id.*

D. Opposer Duped Applicant into Suspending the Opposition to Obtain Time to File its Motion for Summary Judgment

A motion for summary judgment must be filed in a trademark opposition proceeding prior to the first testimony period. 37 CFR § 2.127(e)(1); TBMP § 528.02. Prior to the stipulated suspension filed on November 24, 2014, Opposer's first testimony period was set to open on November 26, 2014. *See* ESTTA No. 13. Shortly before the testimony period was set to open, Opposer's counsel contacted Applicant's counsel indicating that Opposer was interested in exploring settlement and requested that the parties stipulate to a suspension. Tarabichi Decl., ¶ 7. Taking Opposer and its counsel at their word, Applicant agreed to the suspension—***two days before Opposer's testimony period would have opened.*** *See* ESTTA No. 14. However, during the suspension period, Opposer and its counsel made no effort whatsoever to discuss or negotiate a settlement. Tarabichi Decl., ¶ 7. Instead, Applicant received a terse email stating Opposer was not interesting in settling, which was immediately followed by Opposer's Motion for Summary Judgment. *Id.* It is apparent now that Opposer and its counsel duped Applicant into agreeing to a suspension to allow Opposer additional time to prepare and file its Motion for Summary Judgment prior to the opening of Opposer's testimony period. Such tactics should not be tolerated.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

A party moving for summary judgment has the burden of demonstrating the absence of any genuine dispute of material fact and that it is entitled to judgment as a matter of law.

Copelands' Enterprises Inc. v. CNV Inc., 945 F.2d 1563 (Fed. Cir. 1991); TBMP § 528.01.

Importantly, this burden is greater than the evidentiary burden at trial. *Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770 (Fed. Cir. 1995); TBMP § 528.01.

In deciding a motion for summary judgment, the function of the Board is not to try issues of fact, but to determine instead if there are any genuine disputes of material fact to be tried.

Dyneer Corp. v. Automotive Products PLC, 37 USPQ2d 1251, 1254 (TTAB 1995); *University Book Store v. University of Wisconsin Board of Regents*, 33 USPQ2d 1385, 1389 (TTAB 1994); TBMP § 528.01. In doing so, the non-moving party must be given the benefit of all reasonable doubt as to whether genuine disputes of material fact exist; and the evidentiary record and all inferences to be drawn from the facts must be viewed in the light most favorable to the non-moving party. *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766 (Fed. Cir. 1993) (impermissible inferences against non-moving party); TBMP § 528.01.

IV. ARGUMENT

For an opposer to prevail on summary judgment on a § 2(d) likelihood of confusion claim, the opposer must demonstrate that there is no genuine dispute of fact as to whether the contemporaneous use of the parties' respective marks would be likely to cause confusion, mistake, or deceive consumers. *GTFM, Inc. v. Fresh Body, LLC*, 2015 TTAB LEXIS 13, at *11 (TTAB 2015). Moreover, the consideration of likelihood of confusion on summary judgment requires "an analysis of all the probative facts in evidence that are relevant to the thirteen factors set forth in *In re E.I. du Pont de Nemours & Co*" (the "*du Pont* factors"). *Id.* The 13 *du Pont* factors that need to be considered are as follows: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression; (2) the similarity or dissimilarity and nature of the goods or services; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing; (5) the fame of the prior mark; (6) the number and nature of similar marks in use on similar goods; (7) the nature

and extent of any actual confusion; (8) the length of time during and conditions under which there has been concurrent use without any evidence of actual confusion; (9) the variety of goods on which a mark is or is not used (house mark, “family” mark, product mark); (10) the market interface between applicant and the owner of a prior mark; (11) the extent to which a party has the right to exclude others from use of its mark on its goods; (12) the extent of potential confusion, i.e., whether de minimis or substantial; and (13) any other established fact probative of the effect of use. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973).

Importantly, even though the determination of likelihood of confusion is a question of law in TTAB opposition proceedings, the Federal Circuit holds that the determination is “based on findings of relevant underlying facts.” *In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). Accordingly, to the extent there are genuine disputes of material facts relevant to one or more of the *du Pont* likelihood of confusion factors, summary judgment should be denied. *Id.*

A. There Are Disputed Facts Regarding the Dissimilarity of the Marks

In order to determine whether there is a likelihood of confusion due to the similarity of the marks, the marks must be compared in terms of appearance, sound, connotation, and overall commercial impression. *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1429-1430 (TTAB 2013). Specifically, the Board should not split the marks into their component parts and then compare the parts of the marks to determine the likelihood of confusion. *Id.*; *Little Caesar Enterprises v. Pizza Caesar*, 834 F.2d 568, 571 (6th Cir. 1987).

As discussed below, when Applicant’s BETTER ON TOP! mark is compared to Opposer’s RICH’S ON TOP and ON TOP marks in terms of appearance, sound, connotation, and overall commercial impression, the dissimilarities are more than sufficient to obviate any likelihood of confusion. Moreover, there is clearly a genuine dispute of material fact as to whether these dissimilarities preclude a likelihood of confusion, which, in turn, requires the denial of Opposer’s Motion for Summary Judgment.

1. There Are Disputed Facts Regarding the Dissimilarity of the Marks in Terms of Appearance

While two marks may share a common word, courts have held that the inclusion of additional words is sufficient to avoid a likelihood of confusion. *Inc. Publ. Corp. v Manhattan Magazine*, 616 F. Supp. 370, 379–80 (S.D.N.Y. 1985) (holding MANHATTAN INC. not confusingly similar to INC. because the longer word “Manhattan exercises a visual dominance”); *Express Lane Limited Partnership v. Harold Scott Lanes*, 1990 U.S. Dist. LEXIS 16606, *11–12 (E.D. Wash. 1990) (holding that the inclusion of the additional words MUFFLER & BRAKE reduced the similarity in appearance between EXPRESS LANE and EXPRESS LANE MUFFLER & BRAKE); *First Sav. Bank v. First Bank Sys.*, 101 F.3d 645, 653 (10th Cir. 1996) (holding that FIRSTBANK and FIRSTBANK SYSTEM are not phonetically similar due to the inclusion of the additional word SYSTEM); *In re Bed & Breakfast Registry*, 791 f.2D 157 (Fed. Cir. 1986) (holding BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL not confusingly similar).

In the instant case, Applicant’s BETTER ON TOP! mark is sufficiently different in terms of appearance from Opposer’s RICH’S ON TOP and ON TOP marks to obviate any likelihood of confusion. Immediately upon viewing the marks, it is conspicuous that Applicant’s mark consists of three words while Opposer’s ON TOP mark only consists of two words. This creates a visual distinction based on the length of the parties’ respective marks. The length of the marks is something that is memorable and becomes imprinted in consumers’ minds. Second, Applicant’s mark begins with the word BETTER, which is the first word a consumer will read when viewing Applicant’s mark and, as the first word, can be the dominant part of the mark. *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (dominant feature is “often the first part of a mark, which is most likely to be impressed upon the mind of a purchaser and remembered.”). The word BETTER is not contained anywhere in Opposer’s marks. In fact, there is no word in Opposer’s marks that is even remotely similar to the word

BETTER. Likewise, Applicant's BETTER ON TOP! mark ends with an exclamation point. An exclamation point is an uncommon method of punctuation, especially with brands. *In re Sela Products, LLC*, 107 USPQ2d 1580, 1588-1589 (TTAB 2013) (finding marks dissimilar in part based on the "imperative connotation of the exclamation point" in FORZA MILAN!). It is visually memorable. In contrast, Opposer's marks do not contain any punctuation, much less an exclamation point. Furthermore, with regard to Opposer's RICH'S ON TOP mark, that mark begins with the word RICH'S, which is not contained anywhere in Applicant's mark and which further serves to distinguish the parties' respective marks. *See* Section IV.L below. Due to these significant differences in terms of appearance, Applicant respectfully submits that there is no likelihood of confusion due the appearance of the marks but, at a minimum, states that there is at least a genuine issue of fact regarding whether the dissimilarity of the appearance of the marks is sufficient to obviate a likelihood of confusion.

2. There Are Disputed Facts Regarding the Dissimilarity of the Marks in Terms of Sound

When two marks sound dissimilar or are pronounced differently, it weighs against a finding of likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). In comparing two marks phonetically, the Board has repeatedly emphasized the importance of whether the first word in each mark sounds similar or dissimilar. *Wet Seal v. FD Management, Inc.*, 82 USPQ2d 1629, 1639 (TTAB 2007) ("[T]he ARDEN name is the first word purchasers will see or hear when encountering either mark and it is therefore more likely to have a greater impact on purchasers and be remembered by them when they encounter the two marks at different times."). If the first words sound dissimilar and are pronounced differently, then the marks are not phonetically similar. *Id.*

In the instant case, Applicant's BETTER ON TOP! is pronounced and sounds different than Opposer's RICH'S ON TOP and ON TOP marks. As discussed in the preceding paragraph, when considering whether marks sound similar or dissimilar, the Board has repeatedly

emphasized the pronunciation and sound of the first word in the respective marks because it is the first word that a prospective consumer hears. Here, the first word in Applicant's mark is BETTER, a word that does not appear in Opposer's marks. Moreover, there is no word that sounds remotely similar to BETTER in Opposer's marks. Likewise, when comparing Opposer's RICH'S ON TOP mark to Applicant's BETTER ON TOP! mark, the marks sound even more dissimilar due to Opposer's mark beginning with Opposer's house mark RICH'S. Clearly, the marks are phonetically different due to the very different sounds generated by the first word in the parties' respective marks. Accordingly, Applicant respectfully submits that there is a genuine dispute of fact as to whether the marks are sufficiently dissimilar to obviate a likelihood of confusion.

3. There Are Disputed Facts Regarding the Dissimilarity of the Marks in Terms of Connotation

When two marks are dissimilar in meaning or connotation, it weighs against a finding of likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). In this regard, if one of the marks has a distinct innuendo or double meaning that the other mark does not, then the marks are not similar in terms of connotation. *Hershey Foods Corp. v. Cerreta*, 195 USPQ 246, 256 (TTAB 1977) (“[A]pplicant's composite marks "SEALED WITH A KISS" and "A BIG KISS FOR YOU" with their overall connotation and double entendre are so readily distinguishable from any use of "KISSES" made by opposer.”).

In the instant case, Applicant's BETTER ON TOP! conveys a different meaning or connotation than Opposer's RICH'S ON TOP and ON TOP marks. In this regard, Applicant's BETTER ON TOP! mark is a double entendre play on words and a sexual innuendo that slyly references a sexual position in which the female partner is on top of the male partner. Harrison Decl., ¶ 3. This is a play on the fact that whipped cream (i.e., whipped toppings) is food item known to be used during sexual activity. *Id.* This unique connotation is underscored by Applicant's use of an exclamation point at the end of its BETTER ON TOP! trademark,

signifying the intensity of the innuendo. In contrast, Opposer's ON TOP mark conveys nothing more than the fact that whipped toppings are generally placed on top of a food item—there is no sexual connotation and it is nothing more than descriptive in Opposer's usage. As such, Applicant respectfully submits that the differences in connotation weigh in Applicant's favor and against any likelihood of confusion and, at a minimum, there are genuine issues of fact as to whether the differences in connotation are sufficient to obviate a likelihood of confusion.

4. There Are Disputed Facts Regarding the Dissimilarity of the Marks in Terms of Overall Commercial Impression

When two marks are *not identical*, then there is a genuine dispute of fact as to whether the marks create the same or different overall commercial impressions in the minds of consumers for the goods. *GTFM, Inc. v. Fresh Body, LLC*, 2015 TTAB LEXIS 13, at *13 (TTAB 2015) (denying summary judgment); *Mrs. United States National Pageant, Inc. v. Richardson*, 2007 TTAB LEXIS 40, *4 (TTAB 2007) (genuine issue of material fact regarding commercial impressions). In such situations, the Board routinely finds that the moving party fails to carry its burden of proof and denies summary judgment. *Id.*

In the instant case, Applicant's BETTER ON TOP! mark creates a commercial impression that is separate and different from the commercial impression conveyed by Opposer's RICH'S ON TOP and ON TOP marks. This overall different commercial impression is due to the differences in appearance, sound, and connotation discussed in the preceding sections. The additional term BETTER coupled with the exclamation point, the clear phonetic difference created by the first word BETTER, and the sexual innuendo implied by BETTER ON TOP! create a commercial impression that is unique and that obviates any likelihood of confusion. At a minimum, Applicant respectfully submits that there is a genuine dispute of material fact as to whether the different overall commercial impressions preclude any likelihood of confusion.

B. There Are Disputed Facts Regarding the Dissimilarity of the Goods

The second *du Pont* factor considers the similarity or dissimilarity and nature of the goods and services provided by the parties. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). If the goods and services offered are dissimilar, there is less likelihood of confusion. *Miss Universe LP, LLLP v. Community Marketing, Inc.*, 82 USPQ2D 1562, 1569 (TTAB 2007). In fact, when the goods and services are sufficiently dissimilar, even identical marks may not cause confusion. *America's Best Franchising, Inc. v. Abbott*, 106 USPQ2d 1540, 1550 (TTAB 2013).

In the instant case, Applicant's whipped topping product is actually significantly different from Opposer's non-dairy whipped topping product. Harrison Decl., ¶ 2. Applicant's product is a completely vegan whipped topping. *Id.* It is completely organic. *Id.* It has no dairy whatsoever. *Id.* It has zero cholesterol. *Id.* Opposer's product, on the other hand, is not a vegan whipped topping. *Id.* It contains sodium caseinate, a milk derivative (the ingredient list specifically ends with "contains milk"). *Id.* It also contains not 100% organic, as it contains high fructose corn syrup. *Id.* As such, the products are actually quite dissimilar and intended for different consumers (as discussed later). *Id.* Accordingly, Applicant respectfully submits that there are genuine issues of fact regarding the dissimilarity of the parties' goods sufficient to preclude summary judgment.

C. There Are Disputed Facts Regarding the Dissimilarity of Trade Channels

The third *du Pont* factor considers the similarity or dissimilarity of the parties' respective trade channels. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). In this regard, if two marks travel through different trade channels, then the relevant public is unlikely to be confused. *Id.*; *Allergan, Inc. v. ATA Medical International, Inc.*, 2014 TTAB LEXIS 391, *16 (TTAB 2014) (different trade channels weighed in Applicant's favor); *NBC Fourth Realty Corp. v. Peavey Electronics Corp.*, 1997 TTAB LEXIS 519, *12 (TTAB 1997).

A trade channel is how a good or service travels from the provider to the ultimate user or consumer. *Id.*

In the instant case, Applicant's BETTER ON TOP! brand whipped topping travels through trade channels that are completely different from the trade channels used by Opposer's RICH'S ON TOP and ON TOP whipped topping. Harrison Decl., ¶ 5. Applicant BETTER ON TOP ! product will be distributed to, and sold by, organic natural foods retailers. In contrast, Opposer's RICH'S ON TOP and ON TOP product is sold directly to food service industry businesses, such as restaurants, hotels, bakeries, and caterers. *Id.* As a result, Applicant's product and Opposer's product will never appear side by side on a shelf. *Id.* Moreover, because Applicant does not, and will not, sell directly to the food industry, it is impossible for restaurants, hotels, bakeries, or caterers to accidentally or mistakenly purchase Applicant's product instead of Opposer's product. *Id.* Likewise, because Opposer does not sell its product to organic natural food retailers, those retailers and the consumers who shop there cannot mistake Applicant's product for Opposer's product. *Id.* As a result, the parties' use of distinct and separate trade channels obviates any likelihood of confusion. At a minimum, Applicant submits that there are genuine issues of fact relating to this du Pont factor that preclude summary judgment.

D. There Are Disputed Facts Regarding the Conditions Under Which and Buyers to Whom Sales Are Made

The fourth *du Pont* factor considers the conditions under which and the buyers to whom sales are made (i.e., impulse versus careful, sophisticated purchasing). *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). If the goods at issue are being sold to unsophisticated purchasers or if the goods are typically impulse purchasers, then that weighs in favor of likelihood of confusion. *Board of Regents v. Southern Illinois Miners, LLC*, 110 USPQ2d 1182, 1193 (TTAB 2014) (“Purchaser sophistication may tend to minimize likelihood of confusion.”). However, if the goods at issue are being sold to sophisticated purchasers or if

the goods are purchased in a careful manner, then that weighs against a likelihood of confusion. *Id.*

In the instant case, both Applicant's goods and Opposer's goods are sold to sophisticated purchasers. Opposer sells its good directly to businesses in the food service industry, such as restaurants, hotels, and caterers. These are sophisticated business purchasers. Applicant also sells (or will sell) its goods to sophisticated business purchasers, namely, organic, natural food retailers. Moreover, Applicant's goods are targeted to vegans, who are notoriously sophisticated and careful about what they consume. Because both parties sell to sophisticated purchasers and because the sales process does not involve impulse purchasing, this du Pont factor weighs against a likelihood of confusion. At a minimum, Applicant submits that there are disputes of fact precluding summary judgment.

E. There Are Disputed Facts Regarding the Fame of Opposer's Mark

The fifth *du Pont* factor consider the fame of opposer's mark. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). If the opposer's mark is famous, then this factor weighs in favor of opposer. *Id.* Otherwise, if the opposer's mark is not famous, then this factor weighs in favor of applicant. *Id.*

In order to be famous, a mark must be a household name. *Avery Dennison Corp. v. Sumpton*, 189 F.3d 868, 875 (9th Cir. 1999); *Milbank Tweed Hadley & McCloy LLP v. Milbank Holding Corp.*, No. 06-187, 2007 U.S. Dist. LEXIS 97934, *11-12 (C.D. Cal. Feb. 23, 2007); *Thane Int'l, Inc. v. Trek Bicycle Corp.*, 305 F.3d 894, 911 (9th Cir. 2002). In other words, a "mark [must be] practically a household name, of the likes of such giants of branding as Exxon, Kodak, and Coca-Cola." *It's A 10, Inc. v. Beauty Elite Group, Inc.*, No. 13-60154, 2013 U.S. Dist. LEXIS 179596, *22 (S.D. Fla. Dec. 23, 2013). As a result, fame is incredibly difficult to prove. *Id.* In fact, even if a trademark owner spends millions of dollars in advertising per year and sells tens of millions of goods under the mark, that is insufficient to prove fame. *Gennie Shifter, LLC v. Lokar, Inc.*, No. 07-cv-01121, 2010 U.S. Dist. LEXIS 2176, *53 (D. Colo. Jan.

12, 2010); *It's A 10*, 2013 U.S. Dist. LEXIS 179596, *22 (holding Plaintiff's millions spent on advertising, industry awards, and \$50 million of sales per year "do not begin to establish, however that Plaintiff's mark have accumulated the cultural heft to transform them from mere trademarks – even strong ones – to a household name that is instant recognizable among the general public of the United States"). For example, the Federal Circuit even recently held that the COACH brand for luxury bags was insufficiently famous. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1373-76 (Fed. Cir. 2012). In fact, in order to qualify as famous, approximately 75% of the general public should recognize the mark. 4 *McCarthy on Trademarks and Unfair Competition* § 24:106 (proposing that "75% of the general consuming public of the United States" should be required).

In this regard, the TTAB has repeatedly held that simply asserting that a party has significant sales or advertising expenditures is insufficient to prove fame under the fifth *du Pont* factor. *Cognis Corp. v. HANA Co. Ltd.*, 2007 TTAB LEXIS 117, *43-44 (TTAB 2007); *Board of Regents v. Southern Illinois Miners, LLC*, 110 USPQ2d 1182, 1194 (TTAB 2014) .

In the instant case, Opposer has not submitted any evidence proving that its RICH'S ON TOP and ON TOP trademarks are famous. Rather, in its Motion for Summary Judgment, Opposer only argues that its marks are famous because they have been used since 1986. Opposer's Motion for Summary Judgment, at 14. Moreover, Opposer supports this solely by citing to the declaration of Erica Frank. However, as the cases cited in the preceding paragraphs hold, this is clearly insufficient to prove fame. Surely, a mark can be used for 28 years and not be famous. Opposer has not provided any actual evidence that consumers recognize Opposer's marks as famous or that 75% of the population recognizes Opposer's marks. Accordingly, Opposer's marks are not famous, and this fifth *du Pont* factor weighs in Applicant's favor and against any likelihood of confusion.

F. There Are Disputed Facts Regarding the Number and Nature of Similar Marks in Use

The sixth *du Pont* factor considers the number and nature of similar marks in use on similar goods. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). If there similar marks for similar goods exist, then this weighs against a finding of likelihood of confusion. *Id.* When a mark exists in a crowded field, the public is presumed to be able to distinguish the mark from other marks that may have only minor differences. *King Candy Co. v. Eunice King's Kitchen Inc.*, 182 U.S.P.Q. 108 (C.C.P.A. 1974) (“confusion is unlikely because the marks are ... so widely used that the public easily distinguishes slight differences in the marks as well as differences in the goods ...”); *Jupiter Hosting Inc. v. Jupitermedia Corp.*, 76 U.S.P.Q.2d 1042 (N.D. Cal. 2004); *In re Hamilton Bank*, 222 U.S.P.Q. 174, 179 (T.T.A.B. 1984). Pursuant to *In re E.I. duPont de Nemours & Co.*, the “number and nature of similar marks in use on similar goods” must be taken into account when determining whether a likelihood of confusion exists. 476 F.2d 1357 (C.C.P.A. 1973).

In the instant case, TOP is part of a crowded field for whipped topping goods. There are several other marks registered on the Principal Register that include the word TOP for whipped topping and that already co-exist with Opposer’s RICH’S ON TOP and ON TOP marks. These marks include the following:

Mark	Relevant Goods	Registration Number
VELVETOP	Non-dairy based whipped toppings, in Class 29	4,338,749
HEALTHY TOP	Non-dairy based whipped toppings, in Class 29	4,201,737
FRUTOP	Whipped cream, in Class 29	3,838,830
TOP ‘N FILL	Whipped non-dairy topping, in Class 29	2,243,704

TOPS	Whipped topping, in Class 29	2,963,913
TOPS	Non-dairy whipped topping, in Class 29	1,433,101
TOP FROST	Frozen non-dairy whipped topping, in Class 29	1,392,524
HY-TOP	Frozen whipped topping, in Class 29	1,120,324

See Tarabichi Decl., ¶ 8, Ex. E. (attaching copies of registrations).

Accordingly, because the term TOP is part of a crowded field of marks for whipped topping, the purchasing public is aware of the existence and use of multiple marks containing the term TOP. Applicant's BETTER ON TOP! mark is just as, if not more, distinguishable from Opposer's RICH'S ON TOP and ON TOP marks as the many of the already co-existing TOP marks set forth in the above chart. In sum, consumers are conditioned to distinguish even slight differences between such marks in a crowded field, and there is no likelihood of confusion between Applicant's mark and Opposer's marks. At a minimum, Applicant respectfully submits that there is at least a genuine dispute of fact as to whether the existence of a crowded field obviates a likelihood of confusion.

G. Actual Confusion Is Not a Factor Because Applicant Has Not Yet Commenced Use

The seventh and eighth *du Pont* factors regarding the nature and extent of actual confusion and the length of time of concurrent use without actual confusion are inapplicable in the instant case. *PEI Licensing v. Pro Preferred*, 2006 TTAB LEXIS 240, at *51 (TTAB 2006) (actual confusion *du Pont* factors inapplicable where Applicant has not yet made use of the mark). In the instant case, Applicant filed its BETTER ON TOP! trademark application on an intent-to-use basis and has not yet commenced use of the BETTER ON TOP! trademark. As a

result, the actual confusion *du Pont* factors are inapplicable and do not weigh in favor of either party.

H. There Are Disputed Facts Regarding the Variety of Marks on Which a Mark Is Used (i.e., House Mark)

The ninth *du Pont* factor weighs in favor of the opposing party when the opposer's claimed mark functions as a house mark or family mark. *In re American Medical & Life Ins. Co.*, 2002 TTAB LEXIS 657, *2-3 (TTAB 2002); *Seaside Community Dev. Corp. v. Whitman*, 2014 TTAB LEXIS 258, *14-15 (TTAB 2014). The rationale is that, if opposer's mark constitutes a house mark used in connection with a wide variety of goods and services, then it should be given a wider scope of protection. *Id.* However, if this is not the case, then this *du Pont* factor should weigh in favor of the Applicant.

In the instant case, Opposer's ON TOP and RICH'S ON TOP trademarks are not house marks or family marks. Notably, Opposer did not plead that either mark is a house mark or family mark in its Notice of Opposition. *See* ESTTA Nos. 1, 10. Likewise, in its Motion for Summary Judgment, Opposer does not even address this factor because it knows that neither of these marks are house marks or family marks. *See* ESTTA No. 16. These are essentially admissions by Opposer that this factor does not weigh in Opposer's favor. Moreover, Applicant has reviewed Opposer's website and products and has confirmed that ON TOP and RICH'S ON TOP are not house marks or family marks. Accordingly, Applicant respectfully submits that the ninth *du Pont* factor weighs in Applicant's favor and against any finding of a likelihood of confusion.

I. There Is No Market Interface Between Applicant and Opposer

The tenth *du Pont* factor considers the market interface between the applicant and opposer, which was explained to mean whether the opposer had previously provided its consent to use or registration, whether there was an agreement in place between the parties to preclude confusion, whether there was any assignment documents between the parties, or whether there is

any laches or estoppel attributable to opposer. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). In the instant case, there has been no market interface between the parties. Accordingly, this factor is inapplicable and, therefore, neutral and does not weigh in favor of either party. *Stoncor Group, Inc. v. Specialty Coatings, Inc.*, 2012 TTAB LEXIS 240, *24 (TTAB 2012) (no evidence under tenth *du Pont* means the factor is neutral).

J. There Are Disputed Facts Regarding the Extent to Which Opposer has a Right to Exclude Others from use of Its Mark

Admittedly, the eleventh *du Pont* factor traditionally focuses on the extent to which the applicant has the right to exclude others from use of its mark on its goods. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). However, Applicant respectfully submits that it is relevant to consider the extent to which Opposer has the right to exclude others from use of its mark. At a minimum, this would be properly considered under the thirteenth *du Pont* factor, which allows the consideration of any relevant fact or argument relating to likelihood of confusion.

In the instant case, there is really no dispute that Opposer's ON TOP mark is descriptive. And although incontestable on those grounds, incontestability does not prevent this Board from considering the descriptive nature of Opposer's ON TOP mark and the scope of protection that should be afforded to it. *Jackson Winery, Ltd. V. E.& J. Gallo Winery*, 150 F.3d 1142 (9th Cir. 1998) (reviewing evidence of descriptiveness of the term in analyzing the scope of protection to be accorded EMI's "incontestable" trademark ENTREPRENEUR and finding that genuine issues of material fact remained for trial on the issue of the strength of EMI's mark, i.e., the scope of protection). In this regard, Applicant respectfully submits that because Opposer's ON TOP mark is descriptive, it should be afforded only a narrow scope of protection, such that Opposer should only be able to exclude identical marks for identical goods. This is especially true considering the crowded field of TOP marks discussed under the sixth *du Pont* factor above. Accordingly, Applicant respectfully submits that there is a genuine issue of fact as to the scope of protection to

be afforded to Opposer's mark in light of its descriptive nature and whether Opposer's rights should be construed narrowly in light of the descriptive aspect of the mark.

K. There Are Disputed Facts Regarding the Extent of Potential Confusion

The twelfth *du Pont* factor considers the extent to which any potential confusion will be de minimis or substantial. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). If the potential confusion is de minimis (i.e., minimal) as opposed to substantial, then this factor weighs against a likelihood of confusion. *Id.* In addressing this twelfth factor, the TTAB considers the facts, evidence, and arguments presented in connection with the other *du Pont* factors, as well as the number of potential buyers. *In re Davey Products Pty Ltd.*, 2009 TTAB LEXIS 524, *26 (TTAB 2009).

In the instant case, any potential confusion would be de minimis for several reasons. First, vegan consumers will not accidentally purchase a non-vegan whipped topping containing GMOs. Second, the parties use different trade channels and sell to different types of purchasers. Opposer sells directly to the food service industry while Applicant sells to natural, organic food retailers. And third, Opposer's marks already co-exist with more similar marks for whipped toppings. As such, any potential confusion—which is unlikely to begin with—would be de minimis. Accordingly, this factor weighs in Applicant's favor and against a likelihood of confusion. At a minimum, there are questions of fact relating to this factor that preclude summary judgment.

L. There Are Disputed Facts Regarding Other Established Facts Probative of the Issue of Likelihood of Confusion

The thirteenth *du Pont* factor permits the parties to submit any other probative facts or arguments that are relevant to the issue of likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973).

In the instant case, Applicant believes there is another relevant fact that weighs against any likelihood of confusion. Notably, Opposer always uses its ON TOP trademark with the

word RICH'S and, in particular, with the red RICH'S logo: . This is immediately evident by reviewing Opposer's own exhibits submitted by Opposer in support of Opposer's Motion for Summary Judgment. See Exhibits A and B attached to the Declaration of Erica Frank in support of Opposer's Motion for Summary Judgment. It can also be seen by reviewing Opposer's website. See www.richsfoodservice.com. Likewise, Applicant has also verified this. Harrison Decl., ¶ 6.

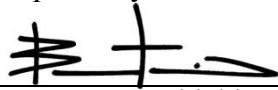
This is important because RICH'S refers to Opposer's corporate name Rich Products Corporation. By always coupling ON TOP with the red RICH'S logo, consumers are always put on notice that Opposer's goods are being sold by Opposer as opposed to some other party. In contrast, Applicant's mark will never be used with RICH's or any term remotely similar to it. Harrison Decl., ¶ 6. Consequently, there is no possibility that any consumer would ever confuse Opposer's goods with Applicant's goods. As such, Applicant respectfully submits that this thirteenth *du Pont* factors weighs in Applicant's favor and against a likelihood of confusion.

V. CONCLUSION

For all the foregoing reasons, Applicant respectfully submits that there are disputed issues of material fact regarding the determination of likelihood of confusion and, therefore, respectfully requests that the Board deny Opposer's Motion for Summary Judgment.

Dated: February 27, 2015

Respectfully submitted,



Bruno W. Tarabichi
OWENS TARABICHI LLP
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San Jose, California 95113
Tel. (408) 298-8204
Fax (408) 521-2203
btarabichi@owenstarabichi.com
Attorneys for Applicant
VegiPro Brands, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copies of the following documents:

**APPLICANT VEGIPRO BRANDS LLC'S OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT; DECLARATION OF BRUNO TARABICHI;
DECLARATION OF ANDREW HARRISON**

has been served on

Brian E. Turung
Sandra M. Koenig
Fay Sharpe LLP
1228 Euclid Ave.
The Halle Bldg., 5th Floor
Cleveland, Ohio 44115

by mailing such document on February 27, 2015 by First Class Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: February 27, 2015



Bruno W. Tarabichi

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Rich Products Corporation,

Opposer,

v.

VegiPro Brands, LLC,

Applicant.

Opposition No. 91206921
Application Serial No. 85/577,551
Mark: BETTER ON TOP!

**DECLARATION OF BRUNO TARABICHI IN SUPPORT OF
APPLICANT VEGIPRO BRANDS, LLC'S OPPOSITION TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

I, BRUNO TARABICHI, declare as follows:

1. I am an attorney at law, duly admitted into practice before all courts for the State of California. I am a partner in the law firm of Owens Tarabichi LLP, counsel for Applicant VegiPro Brands, LLC ("Applicant"). I make this Declaration in support of Applicant's Opposition to Opposer's Motion for Summary Judgment. The matters set forth herein are of my own personal knowledge, and if called upon to testify as to such matters, I could and would do so.

2. On March 22, 2012, Applicant filed U.S. Application Serial No. 85/577,551 for the BETTER ON TOP! trademark in connection with "whipped topping" in International Class 29. Attached as **Exhibit A** is a true and correct copy of U.S. Application Serial No. 85/577,551.

3. On June 27, 2012, the Examining Attorney assigned to the application performed a search of the USPTO's trademark records. Attached as **Exhibit B** is a true and correct copy of the Examining Attorney's search.

4. Finding no conflicting marks, the Examining Attorney approved Applicant's BETTER ON TOP! trademark application for publication the next day on June 28, 2012. Attached as **Exhibit C** is a true and correct copy of the file history document evidencing approval of publication on June 28, 2012.

5. On August 14, 2012, the USPTO published Applicant's BETTER ON TOP! trademark application for opposition. Attached as **Exhibit D** is a true and correct copy of publication.

6. Opposer has not served any written discovery requests (document requests, interrogatories, or requests for admission) in this opposition proceeding. Likewise, Opposer did not notice any depositions.

7. Shortly before the testimony period was set to open, Opposer's counsel contacted Applicant's counsel indicating that Opposer was interested in exploring settlement and requested that the parties stipulate to a suspension. Taking Opposer and its counsel at their word, Applicant agreed to the suspension—*two days before Opposer's testimony period would have opened*. See ESTTA No. 14. However, during the suspension period, Opposer and its counsel made no effort whatsoever to discuss or negotiate a settlement. Instead, I received a terse email stating Opposer was not interesting in settling, which was immediately followed by Opposer's Motion for Summary Judgment.

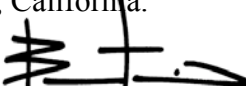
8. TOP is part of a crowded field for whipped topping goods. There are several other marks registered on the Principal Register that include the word TOP for whipped topping and that already co-exist with Opposer's RICH'S ON TOP and ON TOP marks. These marks include the following:

Mark	Relevant Goods	Registration Number
VELVETOP	Non-dairy based whipped toppings, in Class 29	4,338,749
HEALTHY TOP	Non-dairy based whipped toppings, in Class 29	4,201,737
FRUTOP	Whipped cream, in Class 29	3,838,830
TOP 'N FILL	Whipped non-dairy topping, in Class 29	2,243,704
TOPS	Whipped topping, in Class 29	2,963,913
TOPS	Non-dairy whipped topping, in Class 29	1,433,101
TOP FROST	Frozen non-dairy whipped topping, in Class 29	1,392,524
HY-TOP	Frozen whipped topping, in Class 29	1,120,324

Attached as **Exhibit E** are true and correct copies of the certificates of registration for these marks.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 27, 2015 at San Jose, California.



 Bruno Tarabichi

EXHIBIT A

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85577551

Filing Date: 03/22/2012

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	Better On Top!
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Better On Top!
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	VegiPro Brands, LLC
DBA/AKA/TA/FORMERLY	DBA Exposure SMI
*STREET	2655 University Street
*CITY	Eugene
*STATE (Required for U.S. applicants)	Oregon
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	97403
PHONE	541-343-1498

EMAIL ADDRESS	exposuresmi@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	LIMITED LIABILITY COMPANY
* STATE/COUNTRY WHERE LEGALLY ORGANIZED	Oregon
GOODS AND/OR SERVICES AND BASIS INFORMATION	
* INTERNATIONAL CLASS	029
*IDENTIFICATION	Whipped topping
*FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
*NAME	VegiPro Brands, LLC
FIRM NAME	VegiPro Brands, LLC
*STREET	2655 University Street
*CITY	Eugene
*STATE (Required for U.S. applicants)	Oregon
*COUNTRY	United States
*ZIP/POSTAL CODE	97403
PHONE	541-343-1498
*EMAIL ADDRESS	exposuresmi@gmail.com;exposuresales@comcast.net
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	

NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Andrew Harrison/
* SIGNATORY'S NAME	/Andrew Harrison/
* SIGNATORY'S POSITION	Owner-Director
SIGNATORY'S PHONE NUMBER	541-343-1498
* DATE SIGNED	03/22/2012

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85577551

Filing Date: 03/22/2012

To the Commissioner for Trademarks:

MARK: Better On Top! (Standard Characters, see [mark](#))

The literal element of the mark consists of Better On Top!.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, VegiPro Brands, LLC, DBA Exposure SMI, a limited liability company legally organized under the laws of Oregon, having an address of

2655 University Street
Eugene, Oregon 97403
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 029: Whipped topping

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Correspondence Information:

VegiPro Brands, LLC
VegiPro Brands, LLC
2655 University Street
Eugene, Oregon 97403
541-343-1498(phone)
exposuresmi@gmail.com;exposuresales@comcast.net (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Andrew Harrison/ Date Signed: 03/22/2012

Signatory's Name: /Andrew Harrison/

Signatory's Position: Owner-Director

RAM Sale Number: 6984

RAM Accounting Date: 03/23/2012

Serial Number: 85577551

Internet Transmission Date: Thu Mar 22 19:59:19 EDT 2012

TEAS Stamp: USPTO/FTK-67.171.243.216-201203221959195

28679-85577551-49017c217682522b7c1fae1a6

9bbe48570-CC-6984-20120322194918046639

Better On Top!

EXHIBIT B

*** User:mmullen ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	85577551[SN]
02	1	0	1	1	0:01	"VegiPro Brands"[on]
03	3	1	2	2	0:02	"better on top"[bi,ti]
04	15203	N/A	0	0	0:03	*b{v}tt{v}r*[bi,ti]
05	55357	N/A	0	0	0:05	*t{v}p*[bi,ti]
06	99	N/A	0	0	0:01	4 and 5
07	37	0	37	31	0:03	6 not dead[ld]
08	10427	N/A	0	0	0:01	"better"[bi,ti]
09	9666	N/A	0	0	0:01	"top"[bi,ti]
10	13	10	3	3	0:01	8 and 9

Session started 6/27/2012 10:11:27 AM

Session finished 6/27/2012 10:38:42 AM

Total search duration 0 minutes 19 seconds

Session duration 27 minutes 15 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICSRS as Serial Number: 85577551

EXHIBIT C

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	85577551	FILING DATE	03/22/2012
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	MULLEN, MARK TIMOTHY	L.O. ASSIGNED	111

PUB INFORMATION

RUN DATE	06/28/2012		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATON		
STATUS DATE	06/27/2012		
LITERAL MARK ELEMENT	BETTER ON TOP!		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	BETTER ON TOP!

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	VegiPro Brands, LLC
ADDRESS	2655 University Street Eugene, OR 97403
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Oregon
DBA/AKA	DBA Exposure SMI

GOODS AND SERVICES

INTERNATIONAL CLASS	029
DESCRIPTION TEXT	Whipped topping

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	029	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
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PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
06/27/2012	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	004
06/27/2012	DOCK	D	ASSIGNED TO EXAMINER	003
03/29/2012	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
03/26/2012	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	NONE
CORRESPONDENCE ADDRESS	VEGIPRO BRANDS, LLC VEGIPRO BRANDS, LLC 2655 UNIVERSITY ST EUGENE, OR 97403-1667

DOMESTIC REPRESENTATIVE	NONE
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Better On Top!

EXHIBIT D

From: TMOOfficialNotices@USPTO.GOV
Sent: Tuesday, August 14, 2012 00:38 AM
To: exposuresmi@gmail.com
Cc: exposuresales@comcast.net
Subject: Official USPTO Notification: OG Publication Confirmation for Serial Number 85577551

OFFICIAL GAZETTE PUBLICATION CONFIRMATION

Serial Number: 85-577,551
Mark: BETTER ON TOP!(STANDARD CHARACTER MARK)
International Class(es): 029
Applicant: VegiPro Brands, LLC
Docket/Reference Number:

The mark identified above has been published in the *Trademark Official Gazette* (OG) on Aug 14, 2012. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a notice of allowance (NOA) should issue. (Note: The applicant must file a Statement of Use or Extension Request within six (6) months after the NOA issues.)

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

1. Click on the following link or paste the URL into an internet browser:
http://www.uspto.gov/web/trademarks/tmog/20120814_OG.pdf#page=1
2. Wait for the total OG to download completely (as indicated on bottom of OG page).
3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
4. Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 85-577,551, e.g.
5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=85577551>.
NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

EXHIBIT E

United States of America

United States Patent and Trademark Office

FRUTOP

Reg. No. 3,838,830

Registered Aug. 24, 2010

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

DUCOCO ALIMENTOS S/A (BRAZIL LIMITED COMPANY (LTD.))
BR 101, KM 160, S/N, BEBEDOURO
LINHARES/ES, BRAZIL

FOR: CAPSULE OF PURE JELLY FOR FOOD, DESICCATED COCONUT, FLAKED COCONUT, CONDENSED MILK, FERMENTED MILK, FRUIT CHIPS, CANDIED FRUIT, FRUIT PULPS, FRUIT SALADS, UNFLAVORED AND UNSWEETENED GELATINS, PROCESSED GRATED COCONUT, JAMS, CITRIC JELLIES FOR FOOD, CREAM FROM MILK, WHIPPED CREAM, FROSTED FRUITS, MARMALADE, IN CLASS 29 (U.S. CL. 46).

FIRST USE 8-28-1984; IN COMMERCE 2-13-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-724,976, FILED 4-29-2009.

CHARLOTTE CORWIN, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 4,201,737

Registered Sep. 4, 2012

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

GREEN RABBIT, LLC (NEW JERSEY LIMITED LIABILITY COMPANY)
1177 NEW SCOTLAND RD
ALBANY, NY 12208

FOR: NON-DAIRY BASED WHIPPED TOPPINGS CAPABLE OF BEING WHIPPED AND AERATED FOR USE AS TOPPINGS AND FILLINGS ON DESSERTS AND PASTRIES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 10-31-2009; IN COMMERCE 5-31-2010.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HEALTHY", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE STYLIZED WORDING "HEALTHY TOP".

SER. NO. 85-518,795, FILED 1-18-2012.

ELLEN B. AWRICH, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

Int. Cl.: 3, 5, 8, 21, 25, 29, 30

Prior U.S. Cl.: 6, 18, 23, 39, 44, 46, 51, 52

United States Patent and Trademark Office

Reg. No. 1,120,324

Registered June 19, 1979

TRADEMARK

Principal Register

HY-TOP

Federated Foods, Inc. (Illinois corporation)
865 Busse Highway
Park Ridge, Ill. 60068

For: HAND AND SKIN LOTION, TOOTHPASTE, DENTURE CLEANING TABLETS, HAIR SHAMPOOS, CREME RINSE, HAIR CONDITIONER, SUNTAN LOTION, INTENSIVE CARE LOTION, MOUTHWASH, BABY OIL AND BABY POWDER, in CLASS 3 (U.S. CLS. 51 and 52).

First use Nov. 13, 1974; in commerce Nov. 13, 1974.

For: COTTON BALLS, EPSOM SALTS, PETROLEUM JELLY, COTTON SWABS, IODINE, PEROXIDE, GENERAL ANTISEPTICS FOR FIRST AID USE, PLASTIC STRIPS, MINERAL OIL, CASTOR OIL AND RUBBING ALCOHOL, in CLASS 5 (U.S. CLS. 6, 18 and 44).

First use June 6, 1972; in commerce June 6, 1972.

For: RAZOR BLADES, in CLASS 8 (U.S. CL. 23).

First use June 9, 1971; in commerce June 9, 1971.

For: LATEX GLOVES FOR HOUSEHOLD AND DOMESTIC USE, in CLASS 21 (U.S. CL. 39).

First use Mar. 13, 1972; in commerce Mar. 13, 1972.

For: DIAPERS, in CLASS 25 (U.S. CL. 39).

First use Aug. 20, 1974; in commerce Aug. 20, 1974.

For: FROZEN WHIPPED TOPPING, FROZEN COFFEE CREAMER, FRESH MEATS, CANNED BEEF RAVIOLI, INSTANT POTATOES AND CHILI CON CARNE, in CLASS 29 (U.S. CL. 46).

First use Jan. 22, 1971; in commerce Jan. 22, 1971.

For: FLOUR, RICE, PUDDING MIXES, BARBECUE SAUCE, TOMATO SAUCE, CHILI SAUCE, CATSUP, SPAGHETTI SAUCE, FLAVORING SYRUPS FOR FOOD PURPOSES, TEA AND INSTANT TEA, MACARONI AND CHEESE DINNER, PASTA, TOASTER PASTRIES AND SPAGHETTI WITH MEATBALLS, in CLASS 30 (U.S. CL. 46).

First use Jan. 27, 1969; in commerce Jan. 27, 1969

Owner of Reg. Nos. 754,306, 646,571 and 1,007,776.

Ser. No. 69,846, filed Nov. 24, 1975.

JOHN C. DEMOS, Supervisory Examiner

E. P. HARAB, Examiner

Int. Cl.: 29

Prior U.S. Cl.: 46

Reg. No. 2,243,704

United States Patent and Trademark Office

Registered May 4, 1999

**TRADEMARK
PRINCIPAL REGISTER**

top 'n fil

HANAN PRODUCTS COMPANY, INC. (NEW
YORK CORPORATION)
196 MILLER PLACE
HICKSVILLE, NY 11801

FIRST USE 10-1-1997; IN COMMERCE
10-1-1997.

SN 75-339,961, FILED 8-12-1997.

FOR: WHIPPED NON-DAIRY TOPPING FOR
USE IN COOKING, BAKING AND PREPARA-
TION OF DESSERTS, IN CLASS 29 (U.S. CL. 46).

SAMUEL E. SHARPER JR., EXAMINING AT-
TORNEY

Int. Cls.: 29, 30 and 32

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,392,524

Registered May 6, 1986

**TRADEMARK
PRINCIPAL REGISTER**

TOP FROST

TOPCO ASSOCIATES, INC. (WISCONSIN CORPORATION)
7711 GROSS POINT ROAD
SKOKIE, IL 60676

FOR: FROZEN NON-DAIRY WHIPPED TOPPING, FROZEN FRIED ONION RINGS, FROZEN FRIED POTATOES, FROZEN NON-DAIRY CREAMER, FROZEN FRIED FISH STICKS AND FROZEN ENTREES COMPRISED PRIMARILY OF TURKEY, CHICKEN, BEEF, VEAL, OR SEAFOOD, IN CLASS 29 (U.S. CL. 46).

FIRST USE 5-3-1946; IN COMMERCE 5-3-1946.

FOR: FROZEN BREAD DOUGH, FROZEN CONFECTIONS, ICE CREAM, ICE MILK, FROZEN WAFFLES, FROZEN FUDGE BARS,

FROZEN PIZZA, FROZEN ENTREES COMPRISED PRIMARILY OF SPAGHETTI OR MACARONI AND CHEESE, AND FROZEN MEAT PIES COMPRISED PRIMARILY OF BEEF, TURKEY OR CHICKEN, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-3-1946; IN COMMERCE 5-3-1946.

FOR: FROZEN FRUIT JUICE CONCENTRATE, IN CLASS 32 (U.S. CL. 46).

FIRST USE 5-3-1946; IN COMMERCE 5-3-1946.

OWNER OF U.S. REG. NO. 655,307.

SER. NO. 531,342, FILED 4-8-1985.

JESSIE N. MARSHALL, EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,963,913

Registered June 28, 2005

**TRADEMARK
PRINCIPAL REGISTER**

TOPS

TOPS BRANDS, INC. (DELAWARE CORPORATION)
300 DELAWARE AVENUE
WILMINGTON, DE 19801

FOR: CHEESE, CHEESE SPREAD, FRESH MILK, DRIED MILK, CANNED MILK, NON-DAIRY CREAMER, COTTAGE CHEESE, CREAM CHEESE, SOUR CREAM, YOGURT, WHIPPED TOPPING, BUTTER, MARGARINE, DAIRY-BASED DIPS, DIPS, SHELLED NUTS, ROASTED NUTS, CANNED FRUITS, FROZEN FRUITS, FRUIT-BASED PIE FILLING, RAISINS, FRESH FISH, FROZEN FISH, PROCESSED CHICKEN, PREPARED CHICKEN, FROZEN CHICKEN, PICKLES, PROCESSED OLIVES, PEANUT BUTTER, JELLY, FLAKED COCONUT, CANNED SOUPS, VEGETABLE OILS FOR

COOKING IN LIQUID AND SPRAY FORM, SHORTENING, FRANKFURTERS, CANNED BEANS WITH MEAT, PROCESSED MEATS, BACON, PREPARED POTATO SALADS, PREPARED VEGETABLE SALADS, AND FROZEN ENTREES CONSISTING OF MEAT, FISH, AND POULTRY, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1976; IN COMMERCE 0-0-1976.

OWNER OF U.S. REG. NOS. 763,677, 1,433,101 AND OTHERS.

SER. NO. 78-271,445, FILED 7-8-2003.

MICHAEL KAZAZIAN, EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,433,101

Registered Mar. 17, 1987

**TRADEMARK
PRINCIPAL REGISTER**

TOPS

NIAGARA FRONTIER SERVICES, INC. (NEW
YORK CORPORATION)
60 DINGENS STREET
BUFFALO, NY 14206

FOR: CANNED TUNA FISH; LUNCHEON
MEATS, NAMELY, BACON, BOLOGNA,
SALAMI, HAM, WIENERS, SAUSAGE AND
LUNCHEON MEAT LOAVES COMPRISING
OLIVES, PICKLES AND SPICES COMBINED
WITH LUNCHEON MEATS; NON-DAIRY

WHIPPED TOPPING; AND POTATO CHIPS, IN
CLASS 29 (U.S. CL. 46).

FIRST USE 3-31-1976; IN COMMERCE
3-31-1976.

OWNER OF U.S. REG. NOS. 763,677 AND
808,686.

SER. NO. 526,091, FILED 3-11-1985.

ROGER KATZ, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

VELVETOP

Reg. No. 4,338,749

Registered May 21, 2013

Int. Cls.: 29 and 30

TRADEMARK

PRINCIPAL REGISTER

DAWN FOODS, INC. (MICHIGAN CORPORATION)
3333 SARGENT ROAD
JACKSON, MI 49201

FOR: NON-DAIRY BASED WHIPPED TOPPINGS FOR BAKED GOODS, BEING READY TO USE OR NOT READY TO USE, FROZEN OR UNFROZEN; NON-DAIRY BASED MIXES FOR MAKING WHIPPED TOPPINGS FOR BAKED GOODS, FROZEN OR UNFROZEN, IN CLASS 29 (U.S. CL. 46).

FIRST USE 5-4-1999; IN COMMERCE 5-4-1999.

FOR: NON-DAIRY BASED WHIPPED SUGAR-BASED FILLINGS FOR BAKED GOODS, BEING READY TO USE OR NOT READY TO USE, FROZEN OR UNFROZEN; NON-DAIRY BASED MIXES FOR MAKING WHIPPED SUGAR-BASED FILLINGS FOR BAKED GOODS, FROZEN OR UNFROZEN, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-4-1999; IN COMMERCE 5-4-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-743,534, FILED 10-2-2012.

JANICE KIM, EXAMINING ATTORNEY



Leea Street Lee

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Rich Products Corporation,

Opposer,

v.

VegiPro Brands, LLC,

Applicant.

Opposition No. 91206921
Application Serial No. 85/577,551
Mark: BETTER ON TOP!

**DECLARATION OF ANDREW HARRISON IN SUPPORT OF
APPLICANT VEGIPRO BRANDS, LLC'S OPPOSITION TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

I, ANDREW HARRISON, declare as follows:

1. I am the owner and a director of Applicant VegiPro Brands, LLC ("Applicant"). I make this Declaration in support of Applicant's Opposition to Opposer's Motion for Summary Judgment. The matters set forth herein are of my own personal knowledge, and if called upon to testify as to such matters, I could and would do so.

Dissimilarity of the Parties' Goods

2. Applicant's whipped topping product is significantly different from Opposer's non-dairy whipped topping product. Applicant's product is a completely vegan whipped topping. It is completely organic. It has no dairy whatsoever. It has zero cholesterol. Opposer's product, on the other hand, is not a vegan whipped topping. It contains sodium caseinate, a milk derivative (the ingredient list specifically ends with "contains milk"). It also does not contain genetically modified ingredients such as high fructose corn syrup, which is contained in the opposer's product.

Dissimilarity of the Parties' Marks


3. Applicant's BETTER ON TOP! mark is a double entendre and a sexual innuendo that slyly references a sexual position in which the female partner is on top of the male partner. This is a play on the fact that whipped cream (i.e., whipped toppings) is food item known to be used during sexual activity. This unique connotation is underscored by Applicant's use of an exclamation point at the end of its BETTER ON TOP! trademark, signifying the intensity of the innuendo.

4. Applicant has its label prepared for its BETTER ON TOP! product. Attached as **Exhibit A** is a true and correct copy of the label.

Dissimilarity of the Parties' Buyers and Trade Channels

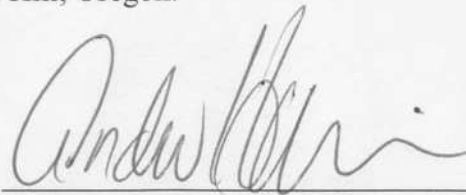
5. Applicant's BETTER ON TOP! product will be distributed by organic/natural food distributors, and sold to organic/natural foods retailers. Even if the product ends up in supermarkets, the Opposer's product is not in the retail format. This is because the Opposer's RICH'S ON TOP and ON TOP products are sold directly to food service industry businesses, such as restaurants, hotels, bakeries, and caterers. As a result, Applicant's product and Opposer's product will never conflict because one is retail and the other is food service. They will also not conflict because one is targeted to the organic and vegan markets and the Opposer's is targeted to the general public and those not as concerned with healthy diets or the environment. Moreover, because Applicant does not, and will not, sell directly to the food industry, it is impossible for restaurants, hotels, bakeries, or caterers to accidentally or mistakenly purchase Applicant's product instead of Opposer's product. Also because the Applicant's product is clearly pure, organic and vegan, while the Opposer's is genetically modified and processed with preservatives

and non-organic additives. Likewise, because Opposer does not sell its product to organic natural food retailers, those retailers and the consumers who shop there cannot mistake Applicant's product for Opposer's product and would never purchase the Opposer's product because of it's ingredient profile.

6. I have reviewed Opposer's website and ON TOP product. In every instance, Opposer uses its ON TOP trademark with the word RICH'S and, in particular, with the red RICH'S logo: . Obviously, Applicant will never use its mark with RICH'S.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

Executed February 27, 2015 at Gold Hill, Oregon.



Andrew Harrison

EXHIBIT A

BETTER ON TOP!

TM

WARNING-Contents under pressure. Do not puncture or incinerate container. Do not expose to heat or store at temperature above 120 °F. Keep out of reach of children. **KEEP REFRIGERATED.**

BETTER ON TOP!

TM

Dairy-Free
**WHIPPED
TOPPING**



no
trans fats



serving
suggestion

made with Organic
Coconut Creme

Zero Cholesterol

NET WT 7 OZ (198g)



STORAGE- Better on Top! Whipped Topping will stay fresh four weeks after date on can when properly refrigerated (40° F). If purchased frozen, thaw for 8 hours in normal refrigerator before use.

TO USE- Remove cap. Shake can well before each use. Turn can completely upside down and press nozzle sideways. Rinse nozzle after each use.



Dairy-Free
**WHIPPED
TOPPING**



no
trans fats



serving
suggestion

made with Organic
Coconut Creme

Zero Cholesterol

NET WT 7 OZ (198g)



Nutrition Facts

Serving Size 2 tablespoons (6g)
Servings Per Container about 33

Amount Per Serving

Calories 12 Calories from Fat 9

% Daily Value*

Total Fat 1.5g 2%

Saturated Fat 0g 0%

Cholesterol 0 mg 0%

Sodium 0 mg 0%

Total Carbohydrates 1g 2%

Dietary Fiber 0g 0%

Organic Sugars 1g

Protein 0g

Vitamin A 0% * Vitamin C 0%

Calcium 0% * Iron 0%

* Percent Daily Values are based on a 2,000 calorie diet

INGREDIENTS: ORGANIC COCONUT CREAM, ORGANIC CANE SUGAR, ORGANIC VANILLA, GUAR GUM, XANTHAN GUM AND NITROUS OXIDE AS A PROPELLANT



PACKED FOR VEGI PRO BRANDS,
EUGENE, OR 97403
www.betterontopwhippedtopping.com

Verified by
Quality Assurance International
MADE IN USA



PROCESSED AT PLANT #37-046

**BETTER
ON TOP!**
TM

Dairy-Free
WHIPPED TOPPING

**ZERO
CHOLESTEROL**

**NO
TRANS FATS**

serving
suggestion



made with Organic
Coconut Creme



NET WT 10 OZ (283g)